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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourth session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 29 January 1990, at 3 p.m.

Chairman: Mr. BADAWI EL SHEIKH

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Study of problems, policies and progressive measures relating to the more effective realization of economic, social and cultural rights

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The meeting was called to order at 3.20 p.m.

STUDY OF PROBLEMS, POLICIES AND PROGRESSIVE MEASURES RELATING TO THE MORE EFFECTIVE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. The CHAIRMAN invited Mr. Danilo Türk, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to introduce his preliminary report on problems, policies and progressive measures relating to the more effective realization of economic, social and cultural rights (E/CN.4/Sub.2/1989/19). He said Mr. Türk's report was of considerable importance to the work of the Committee. In order to derive maximum benefit from the dialogue with him, Mr. Marchand Romero would lead the discussion and provide a summary of it for the Committee's report.

2. Mr. TÜRK (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities) said that he was looking forward to hearing the views of the Committee, which had been recognized as the principal forum in which the implications of the concept of economic, social and cultural rights were being explored. In its short existence the Committee had already done much to elaborate the normative content of each of those rights, an exercise which was fundamental for their effective monitoring. In his capacity as Special Rapporteur of the Sub-Commission, he was interested in furthering the co-ordination of efforts to achieve economic, social and cultural rights. Like all other human rights, they were universally recognized and universally relevant and, as ideological differences were diminishing, it was coming increasingly to be acknowledged that they should be given greater prominence on the agendas of the Commission on Human Rights and the Sub-Commission. The role of the Sub-Commission in the matter was twofold: firstly, it was called upon to produce studies which would be useful to other United Nations bodies in their human rights activities; and, secondly, it had the task of identifying problems, both thematic and country-specific, which revealed patterns of human rights violations. To date, neither of those two roles had been developed to any great extent in the case of economic, social and cultural rights, and the study with which he had been entrusted was a first step in that direction.

3. Turning to his preliminary report (E/CN.4/Sub.2/1989/19), he said that he was well aware of the enormity and diversity of the problem area of economic, social and cultural rights and the breadth of the mandate which he had been given. The preliminary report was designed to provide a basis for discussion on some basic conceptual questions and a selection, on which comments were invited, of more specific questions which would be considered at a later stage. The report had been submitted to the Sub-Commission, which had approved its basic approach and made valuable suggestions. The Committee might find useful material in the account of the discussion contained in the summary records of the Sub-Commission's forty-first session. A senior member of that body, warning against proceeding too hastily with the work, had pointed out that the 1975 study entitled The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress by Manouchehr Ganji was still a major source of information. He hoped that his own report would initiate a systematic series of specialized studies by the Sub-Commission and the Commission.

4. The conceptual problem as to the nature of economic, social and cultural rights was set out in paragraph 15 of his preliminary report, in the form of three questions the answers to which were outlined in subsequent paragraphs. It was essential to deepen the understanding of economic, social and cultural rights so that they could be seen as not differing from civil and political rights in their essential nature but rather by the nature of the obligations of States in regard to their implementation. He invited the comments of members of the Committee on that subject.

5. Part II of the preliminary report dealt with selected problems in the realization of economic, social and cultural rights at the national level. The first such problem was that of extreme poverty, which was the most urgent and difficult issue. There was therefore good reason to select it for further study since it had not yet found proper expression in discussions on human rights. He drew attention to the arguments in paragraphs 45 and 46 against allowing the use of the term "poverty" itself to lead to the situation being accepted as normal. At a later stage, attempts must be made to understand the problem better so that it could be addressed more effectively. The methods for changing the situation must include some redistribution of wealth but also a strengthening of respect for the civil and political rights of the poor themselves and a development of the concept of the interdependence and indivisibility of all human rights. Paragraph 50 referred to the more specific issue of rural poverty. Economic, social and cultural rights had often been discussed in the context of industrial societies, and more attention should be given in the Sub-Commission to the problems of rural societies. In that connection, land reform might be considered as a means of guaranteeing the enjoyment of many human rights, including the right to own property.

6. The other problem selected for discussion at the national level was that of structural adjustment. Poverty was part of a broader socio-economic reality in which structural adjustment played a major role in all societies. It caused unemployment in industrial societies, it was highly important in the current turbulent phase in centrally planned economies and it was related to the debt problem in the developing countries. A recent UNICEF study entitled Adjustment with a Human Face, quoted in his report (paras. 59-63) made an interesting analysis of the relationship between availability of resources and the realization of economic, social and cultural rights. It concluded that there was no inevitability about the connection between declining per capita GDP and reduction in basic services in the short term, although in the long term economic growth was essential. Further work was required on the issue and he would be grateful for comments from members of the Committee, who must be well aware of structural adjustment problems from their consideration of reports by States parties.

7. He had assumed in his report that international co-operation was a vital element in the realization of economic, social and cultural rights and he had selected as his first specific issue that of developing indicators to enable human rights bodies to assess the progress achieved. It was a matter which so far had been largely neglected by the Commission on Human Rights and the Sub-Commission, although he was aware that the Committee, as the central United Nations body in the field, had done important work on the subject in connection with its evaluation of States' reports. The question was whether it should also be taken up by the Commission and Sub-Commission and, if so, whether complementarity of effort could be achieved between those bodies and

the Committee. He personally believed that a broad discussion was desirable but he would like to hear the views of the Committee on the matter. In developing indicators, the Sub-Commission had considered that regard must be had to the nature of the obligation involved for the State: there was an obligation of result, such as the prohibition of discrimination, under article 2 (2) of the Covenant, and there was an obligation of conduct, namely, to take appropriate action to guarantee the progressive implementation of the rights concerned. The Sub-Commission had discussed how far socio-economic indicators, such as infant mortality and life expectancy, were appropriate yardsticks to monitor the purpose. For example, should it be deemed that violations of the Covenant had occurred if the figures did not show an improvement within a specified period of time? Furthermore, what regard should be had to the complexity of consequences, such as the relationship between the population growth that would result from improvement in infant mortality and life expectancy, and the available resources and services?

8. At its previous session, the suggestion had also been made that the Sub-Commission should focus on the Lorenz Curve, a well-known technique for analysing distribution of income and wealth, as one way of measuring progress in the realization of economic, social and cultural rights. The Sub-Commission's approach was of course much less developed and less linked to the Covenant than that of the Committee. Consequently, any suggestions the Committee might make in that regard could be particularly useful to the Sub-Commission in its work.

9. The second problem discussed at the level of international activities related to further standard-setting. In his view, further standard-setting was necessary in some areas, and the Sub-Commission had a role to play in that process. He cited as examples the right to housing and the right to academic freedom, regarding which he had made two suggestions in his preliminary report. At a time when further standard-setting was no longer generally regarded as a priority in the field of human rights, those suggestions had received support in the Sub-Commission. Further comments thereon by the Committee would of course be useful.

10. Finally, he turned to the role of the international financial institutions, a question discussed in paragraphs 77 to 93 of the preliminary report. All members of the Sub-Commission, irrespective of their professional or regional allegiance, had supported the idea of further study of the role of those institutions. Some evolution had been noted in the thinking of both the International Monetary Fund and the World Bank: it was, for example, accepted that the issue of poverty should be addressed in their work. His preliminary report referred to a communiqué adopted the previous year by the Development Committee of the IMF and the World Bank, which set out the ingredients for successful structural adjustment programmes, including integration of poverty reduction objectives and environmental considerations into the design of programmes, as well as ways of mitigating the adverse effects on the most vulnerable groups, preferably by income-generating programmes. The question was thus whether the stronger emphasis placed on the problem of poverty permitted further discussion on the use of human rights standards in programmes sponsored by those institutions. Paragraph 92 of his preliminary report contained various ideas on approaches to that issue, which had been supported by all members of the Sub-Commission without exception. It remained to be seen whether the programme put forward was a realistic one.

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11. In conclusion, he asked the Committee to bear in mind that the debate in the Sub-Commission had started from a very broad and vague idea, as could be seen from the introduction to the preliminary report. He had tried to organize the ideas that had emerged in such a way as to bring about a meaningful and permanent involvement of the Sub-Commission in the field of economic, social and cultural rights.

12. The CHAIRMAN thanked Mr. Türk for introducing his preliminary report, noting that, in view of the complexity of the subject, he had raised questions rather than providing answers. He noted with appreciation Mr. Türk's interest in the question of indicators, and his reference to the question whether there should be some harmonization between the activities of the Sub-Commission and those of the Committee on Economic, Social and Cultural Rights.

13. Mr. DAO (International Labour Organisation) said that Mr. Türk's report referred in many places to ILO action and measures, and to notions and ideas with which the ILO was either familiar or in agreement. Speaking first of formulation of rights under the Covenant, he noted that paragraph 13 of the report observed that there were only a few cases in which rights were formulated in terms of the individual's rights. Several of those cases concerned rights established by articles 7, 8 and 9 of the Covenant, concerning conditions of work, trade union rights and the right to social security, all rights which fell within ILO's areas of concern. As pointed out in paragraph 25 of the report, ILO conventions and recommendations set precise rules, constituting a sort of minimum level of protection (para. 29), or a minimum entitlement, as asserted by Mr. Alston (para. 30). That aspect of the question of formulation of rights had an important bearing on the possible selection of indicators to be used in assessing progress in implementation of rights under the Covenant.

14. A second point also concerned the nature of the obligation under various articles of the Covenant. In paragraph 13, mention was made of the right to form trade unions, the right to education, the right to just and favourable conditions of work, etc; but there was only one substantive right established under articles 6 to 15 where the State's undertaking was not to recognize but to ensure: namely, the right to form and join trade unions established under article 8. That point had been made by the ILO Committee of Experts in its earlier report to the Economic and Social Council on implementation of the Covenant, in which it had observed that the right guaranteed under article 8 was similar to the majority of obligations set forth in ILO conventions, in that it was meant to be of immediate execution, and not, like most other rights guaranteed under the Covenant, a promotional right, to be progressively implemented as capacities and conditions permitted. One reason to account for the different nature of those rights was that the right to form and join trade unions was also a right established under article 22 of the International Covenant on Civil and Political Rights. It therefore partook not only of economic and social rights, but also of civil and political rights, as had been reaffirmed by the competent ILO bodies in several resolutions stressing that the full exercise of the right to form and join trade unions was linked to the exercise of other civil liberties such as freedom of expression and opinion.

15. A third point related to the question of extreme poverty and structural adjustment. The concept of "basic needs", referred to, inter alia, in paragraphs 47 and 56 of the report, had been developed by the World Employment Conference held under the auspices of ILO in 1976. On that occasion it had been defined as a country-specific and dynamic concept which included individual consumer requirements of a family, such as food, clothing and housing, and essential community services such as transport, drinking water and health services. In the background papers submitted to the Conference by ILO, it had been stated, in particular, that conventional development strategies had not succeeded in reducing the numbers of poor and inadequately employed people. The need for a new approach to development was made obvious in Mr. Türk's report, notably with reference to the question of extreme poverty and the question of structural adjustment. The main thrust of ILO's effort to alleviate poverty since 1976 was undertaken within the framework of the World Employment Programme launched in 1969. In that context, in November 1987 it had convened a High-Level Meeting on Employment and Structural Adjustment. Among the conclusions adopted by that Meeting, he wished particularly to mention the importance of scrutinizing the impact of stabilization and adjustment programmes on poverty groups, and the need fully to integrate the social dimensions and consequences of adjustment policies in the decision-making process.

16. His last point concerned the use of indicators. ILO fully subscribed to the suggestion made in the report that existing indicators should be used to assess progress in implementation of rights under the Covenant. As it had stated on many occasions, those indicators should include in the first place those set by relevant international labour standards, inter alia, ILO Conventions regarding the minimum age for admission to employment, hours of work and rest, holidays with pay, safety and hygiene at work, and social security - not only with regard to the level of protection, but also with regard to coverage. It was those standards that should be taken into account in the first place, because they were quantitative, laying down quantified criteria. However, that did not preclude the selection of other standards developed by ILO and other agencies.

17. Mrs. JIMENEZ BUTRAGUEÑO noted that, in addition to the problems of unemployment, there was also a problem of persons over the age of 65 with inadequate pensions, whose situation was, if anything, worse than that of the unemployed. She felt that mention of such persons might usefully have been made in paragraph 39 of Mr. Türk's report.

18. Mr. ALSTON said that he had recently prepared a report for the General Assembly focusing on the role of the treaty-monitoring bodies in the human rights system. The starting-point for that report had been the contention that the treaty bodies should not be seen as separate from the political organs (such as the Commission on Human Rights) or the other expert organs (such as the Sub-Commission), but that all should be seen to be working together. The presence of the Special Rapporteur of the Sub-Commission in the Committee was thus especially welcome as a matter of principle.

19. He wondered whether recent ideological developments which Mr. Türk claimed had facilitated a more objective focus on economic, social and cultural rights might not in fact have the opposite effect. The corollary of attaching more importance to civil and political rights might be that less importance was attached to economic and social rights. An obvious example was

the argument that, if countries were to become more competitive, a certain level of unemployment must be tolerated within the economy. In such circumstances, the Committee might find that countries such as those of Eastern Europe ceased to be its champions in United Nations bodies.

20. The Special Rapporteur need not be concerned that he might seem to be trespassing on the Committee's preserves. On the contrary, the Committee was open to influence, and urged him to confront any issues of a conceptual and practical nature that were potentially of mutual concern.

21. Regarding the nature of States parties' obligations, the notion of "progressive realization" was sometimes taken to imply that an obligation could be deferred to some point in the distant future. However, the obligation to take steps was in fact an immediate one, and States were thus under an immediate obligation to demonstrate that progress was being made in that regard.

22. He urged the Special Rapporteur to devote as much attention as possible to the admittedly complex problem of indicators. In particular, professional assistance might well be required to carry out the necessary work on the topic. It was also important to request Governments to produce "benchmarks", namely their own indicators for their own societies in such fields as housing, school attendance and nutrition. In the case of the "poverty line", for example, there could be no useful debate in the Committee on the extent to which economic rights were enjoyed in a given country unless a threshold of minimum subsistence had been agreed upon. States parties should thus be under an obligation to monitor the status of implementation in their countries with regard to each of the rights in the Covenant, and to provide detailed information in that connection - an exercise they were often reluctant to undertake.

23. On the question of violations, he said that the Committee had considered the possibility of an Optional Protocol to the Covenant, but that there had been considerable differences of opinion on the feasibility of such an instrument. He himself thought that it could be introduced, but that the principal focus of such a mechanism should be on the obligations undertaken by Governments rather than on the rights of individuals under the Covenant.

24. Referring in conclusion to structural adjustment, he said that, in general, dialogue between members of a human rights body and an organization such as the International Monetary Fund or the World Bank was usually pointless, since the two sides were operating from fundamentally different standpoints. There was little likelihood that the officials of such organizations would pay greater attention to human rights issues unless the Committee could make its proposals and requests for information in very precise terms to which those officials could respond. To do so, the Special Rapporteur would have to familiarize himself on the spot with the policies and procedures of the institutions concerned.

25. Mr. SIMMA said that he agreed with most of the points raised by Mr. Alston.

26. In general, he felt that in his report Mr. Türk took a perhaps unduly optimistic view of developments in the human rights field: it might in fact turn out that in future less emphasis would be placed on economic, social and cultural rights, a trend which the Committee must make every effort to oppose.

27. Co-ordination must be a priority item on the agendas both of the Sub-Commission and of the Committee itself. In order to avoid any overlapping it might be useful, for example, if the official records of the Sub-Commission's discussion in 1989 on Mr. Türk's preliminary report were circulated to members of the Committee, preferably before the end of the week.

28. In conceptual terms, he felt that there was sometimes a greater convergence between the obligations arising under the International Covenant on Civil and Political Rights on the one hand, and the International Covenant on Economic, Social and Cultural Rights on the other, than might be suspected at first glance: both "sets" of rights involved a threefold obligation on the part of the State, namely to respect, to ensure, and to provide those rights. For example, in order to ensure that citizens enjoyed adequate and timely recourse to the courts (the United States notion of "due process"), a right which clearly fell within the scope of the International Covenant on Civil and Political Rights, a State might be under an obligation to establish a more effective judicial system, which could constitute an obligation under the terms of the International Covenant on Economic, Social and Cultural Rights.

29. With regard to indicators, he said that he considered them an important part of the Committee's work on those economic, social and cultural rights which could be implemented progressively, in that they would enable it to measure the extent to which progress was being achieved. It might also be possible to use indicators to establish a threshold for determining whether violations of the Covenant had occurred, but that would be a complex and difficult task given the indicators currently available to the Committee.

30. Mr. MUTERAHEJURU said that he approved of the approach adopted by Mr. Türk in his report, but queried whether, in the light of the radical changes taking place in attitudes to such fundamental human institutions as the family, it was possible in practical terms to arrive at a unified United Nations approach to economic, social and cultural rights.

31. Mr. TEXIER said that he fully shared the concern to achieve greater co-ordination between the Committee on Economic, Social and Cultural Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights, whose mandates and preoccupations to some extent overlapped.

32. He also agreed with Mr. Simma that there should not be excessive optimism as to the future balance of emphasis between civil and political rights on the one hand and economic, social and cultural rights on the other. Current political developments, especially in Eastern Europe, might tend to obscure the widening economic and social gap between North and South, which in part explained the continuing non-implementation of rights enshrined in the International Covenant on Economic, Social and Cultural Rights.

33. At the same time "external" factors such as debt-servicing problems should not be used by States parties as an excuse for evading their obligations under the Covenant: Governments must be asked what they were doing with such resources as they had at their disposal to alleviate the economic and other ills affecting their countries and to improve social services. One area in which cautious optimism might be appropriate was defence expenditure, and Governments, especially those of countries not actually in a state of war, could be asked to indicate the percentage of national income spent on armaments and defence.

34. He felt that it would be difficult but not impossible to arrive at generally agreed definitions of such concepts as "extreme poverty" or "minimum acceptable income", but that it would be a complex exercise to define the obligations of States in respect of standards of living. The Committee should therefore consider its work in that regard as being of a long-term and continuing nature, but also as a topic, to which high priority should be attached.

35. Mr. ALVAREZ VITA said that he fully shared the optimism conveyed by the report. The topic, he believed, should be treated as a separate item of the Committee's agenda.

36. Welcoming the fact that the Committee had, as was noted in paragraph 34 of Mr. Türk's report, started to build a coherent interpretation of the International Covenant on Economic, Social and Cultural Rights, he was pleased to inform members that the Committee's conceptual approach had been invoked in a judgement rendered in a court in his own country, Peru.

37. A further point was that economic, social and cultural rights should not be considered as less fundamental than civil and political rights. However, he agreed with the remark in paragraph 28 of the Special Rapporteur's rapport that the specific nature of their implementation was generally recognized.

38. With regard to the question of an Optional Protocol, he believed that such an instrument should include the broadest possible guarantees and protection of the rights contained in the Covenant. The Optional Protocol should logically also include the obligation incurred by a country in acceding to the Covenant, and should mention the international co-operation referred to in article 2 (1) of the Covenant. He would be interested to learn Mr. Türk's opinion of the possibility of elaborating an Optional Protocol on those lines.

39. Mr. NENEMAN noted that Mr. Türk's report referred to the "planned-economy countries", which was rapidly becoming an outdated term. Most of those countries were either becoming free-market economies or had a large free-market sector. To be frank, the Eastern countries had busied themselves for so many years with the problem of finding a fair division of the fruits of labour that they had, as it were, forgotten how to work, leaving less and less to divide. Of course, maternity leave for working mothers could be extended to the point where the woman ceased to work completely, but it might be wiser to pay working fathers better so that a woman would not be forced to work if she was only pretending to do so. Health benefits had been built up to an extent where people preferred to take sick leave rather than work, since the results were the same. There must be a relationship between economic

development and social rights, and if that relationship was broken, it was not reasonable to expect more social rights. He agreed with Mr. Alston that a situation might arise in which those rights would be somewhat less extensive than they had been so far.

40. On the other hand, a certain optimism was in order. He had heard on the radio that morning that the President of the United States of America had proposed a 2 per cent cut in the United States military budget, for the first time since the Second World War. At the dawn of the "post-industrial society", serious cuts in military spending might lead to an improvement in social rights, or at the very least the eradication of the pockets of poverty in the rich countries.

41. The report mentioned property rights in the countryside, which was an area of particular importance for Eastern Europe and the Union of Soviet Socialist Republics. It had been found, for example, that detachment of property rights from the peasants did not appear to lead to a very productive situation in the countryside, yet small landholdings were also not a viable solution. An optimum property system for rural areas must be established on an objective basis, since the highest productivity must be obtained from the land, in order for the right to food to be achieved.

42. Throughout its discussions the Committee must keep the principle of relativity in mind; it should approach the problem from the developing countries' point of view. Concerning housing, for example, it was rather out of place to speak of water, heating and electricity in relation to Masai huts in Africa. It was not possible to have universal indicators when speaking of economic, social and cultural rights: certain rights were not possible without a certain level of development. Of course, there was no clear-cut objective rule, and countries with a lower per capita income often found better solutions to social problems than ones with a higher per capita income.

43. Mr. KONATE said there was one difficult but crucial question that had not been dealt with, namely the definition of the content and nature of the obligations involved. Such a definition might help the Committee to determine means of implementing the Covenant. The report gave some indication of a debate which all parties were trying to avoid, namely, the conditions for exercising human rights in general and economic, social and cultural rights in particular. In that connection, he categorically rejected the idea that economic, social and cultural rights depended on the level of development of a country: no matter what that level, it was presumed that those rights should be achieved. The Committee should stress the conditions for exercising economic, social and cultural rights because the realization of those rights depended on the improvement of conditions in the national and international environment, which were largely dependent on the structure of international relations themselves. The report emphasized the importance of international co-operation, but it should be stressed that such phenomena as extreme poverty were not produced in a vacuum but reflected a particular international economic situation. Such co-operation should be regarded as an obligation deriving from the Charter of the United Nations on the same basis as other Charter obligations.

44. His only reservation with regard to the report was that the use of certain terms, such as "extreme poverty", "minimum level", "structural adjustment", etc., might complicate the work involved. Although the Commission on Human Rights had adopted a resolution on the subject whose

terminology he found frankly surprising, he believed categorizations had no other effect than to divide the beneficiaries of co-operation. There was also the danger of considering the beneficiaries of co-operation as being primarily the developing countries, an erroneous approach. The developing countries were not the only ones to suffer from the lack of enjoyment of economic, social and cultural rights, as the studies had consistently shown, and the Special Rapporteur should therefore take that into account.

45. Mr. FOFANA said that the country reports examined by the Committee at its current session had highlighted the need to find an international solution to the problems of the deterioration in the terms of trade, drug consumption, and the third world debt and solutions advocated by the financial institutions. In his view attention should also be given to the problem of protectionism, which might lead to a trade war if not solved, especially in view of the economic integration of the European Economic Community being planned for 1992, and to the costs of conservation and protection of the environment, which exceeded the financial capacity of the individual States.

46. Mrs. JIMENEZ BUTRAGUEÑO, referring to remarks by Mr. Texier and Mr. Neneman, said that in her opinion the ideological rapprochement between East and West would not prove to be a negative phenomenon in the long run. She agreed with Mr. Alston concerning the changes taking place in Eastern Europe. It was important for those changes not to obscure the needs of the Southern countries, which the Special Rapporteur should bear in mind in his final report.

47. The CHAIRMAN, speaking as a member of the Committee, said that part I of the report should contain clear definitions of the purpose of the unified approach, the content of each economic, social or cultural right and the minimum subsistence level to be applied in determining extreme poverty. Without such definitions there might be some confusion concerning the basic principles of Mr. Türk's report. Second, he was concerned that the selective approach taken in part II might prejudice the Committee's capacity to make an overall, objective appraisal of the situation of economic, social and cultural rights in the developed and developing countries. Third, he would like to know on what basis Mr. Türk would be choosing the most highly indebted countries for his study.

The meeting rose at 6 p.m.